U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 7 2004

IN RE: Applica[redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 303 and 301 of the Immigration and Nationality Act; 8 U.S.C. §§ 1403 and 1401.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center on September 9, 2003. A subsequent motion to reopen was granted by the Director, and the previous October 20, 2003, decision was affirmed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.[1]

The record reflects that the applicant was born on July 7, 1971, in Panama. The applicant's mother, Barbara [redacted], was born in Panama on February 28, 1942, and she became a naturalized U.S. citizen on November 22, 1994, when the applicant was twenty-three years old. The applicant claims that his father is a U.S. citizen born in North Carolina on May 15, 1947. The applicant seeks a certificate of citizenship pursuant to section 303 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1403, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found the applicant had failed to establish who his father was, or that his father was a U.S. citizen at the time of the applicant's birth abroad, as required by section 303 of the Act. Specifically, the director stated that the birth certificate submitted for the applicant was registered in Panama on June 15, 1973, two years after his actual birth, and that it therefore held insufficient reliability and weight in and of itself, to establish paternity over the applicant. The director noted further that the 1986, New York divorce certificate submitted by the applicant's mother states that she and [redacted] had no children together. The director concluded that in light of the adverse information contained in the record and because no convincing evidence such as DNA evidence was submitted to establish paternity, the applicant had failed to establish that his father was a U.S. citizen or that he qualified for consideration under section 303 of the Act. The application was denied accordingly.

Counsel asserts on appeal that the U.S. Government accepted the authenticity of the applicant's birth certificate when it approved his immigrant visa and when it used the document to establish that the applicant was born in Panama for removal proceeding purposes. Counsel asserts that the applicant's birth certificate establishes that [redacted]) is the applicant's father, and that immigration application and witness affidavit evidence in the record further establishes that [redacted] is the applicant's father and that [redacted] is a native born U.S. citizen. Counsel concludes that the applicant has therefore established that he is entitled to derivative citizenship through his father.

Section 303 of the Act states, in pertinent part that:

> (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

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[1] The record reflects that the applicant was placed into removal proceedings and that on February 14, 2003, he was found to be a removable alien by an immigration judge (IJ). The applicant appealed the IJ order to the Board of Immigration Appeals (Board) and the matter was subsequently remanded to the IJ on July 30, 2003, for consideration of the applicant's derivative citizenship claim through his father. Citizenship and Immigration Services (CIS) centralized computer records indicate that the applicant was again found to be a removable alien and that he was ordered removed by the IJ for a second time on February 27, 2004. The record contains no indication that the second removal order was appealed to the Board or that the Board has made any determination regarding the applicant's derivative citizenship claim.

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

In the present case, the record reflects that the applicant was born in the Province and District of Panama, in the Republic of Panama. Accordingly, the AAO finds that the applicant is not eligible for citizenship under section 303(a) of the Act because it applies only to persons born in the Canal Zone.

The record contains a copy of a U.S. birth certificate stating that on May 15, 1947, Russell Franklin Davis was born in Asheville, North Carolina to [redacted] The record additionally contains three Panamanian birth certificates (issued in 1981, 1982 and 1992) reflecting that pursuant to Volume 438 of the Civil Registry of Births in the Province of Panama, Part 381, the applicant was born in the District of Panama on July 7, 1971, to Russell Franklin Davis Woodruff and Barbara Constance Downer Lawrence.

The AAO finds that the applicant has established that his birth certificate has probative value in spite of the fact that his birth was not registered until two years after his birth. The AAO notes that the 1981, 1982, and 1992, issued birth certificates submitted by the applicant refer to the same original birth certificate in volume 438, part 381 of the Civil Registry of Births in the Province of Panama. The birth certificates contain the same names for his parents and they contain the same birth date for the applicant. The AAO notes further that the 1981 issued birth certificate contains information indicating that Russell Franklin Davis Woodruff's (Mr. Davis') father was Thomas Franklin Davis and that his mother was Ida Woodruff, and that this information is consistent with the birth certificate submitted by the applicant for his father.

The record additionally contains a Form I-130, Petition for Alien Relative (Form I-130) filed by the applicant's mother more than ten years prior to the applicant's application for a certificate of citizenship, in June 1991, stating that the applicant's father's name w[redacted] The September 1995, approved Immigrant Visa and Alien Registration form for the applicant also states that the applicant's father's first name is [redacted] In addition, the record contains a Panamanian marriage certificate reflecting that Russell [redacted] married the applicant's mother on March 3, 1967, and that the two were married at the time of the applicant's birth in July of 1971. The record thus reflects that the applicant and his mother have consistently named [redacted] as the applicant's father since 1973, in official Panamanian documentation as well as in U.S. immigration applications and documents. Moreover, the AAO notes that neither the applicant nor his mother appear to have obtained immigration benefits or other child related aid through [redacted] Thus neither appears to have had a reason in the past to claim that [redacted] was the applicant's father.

In *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989), the Commissioner indicated that under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true.

The AAO finds that although the record contains a September 8, 1986, New York divorce decree stating that the applicant's mother and [redacted] had no children together, the cumulative evidence presented in the applicant's case, combined with an affidavit written by the applicant's mother explaining that she did not claim any children during her 1986, default divorce proceedings with [redacted] because she had not seen Mr. [redacted] since their separation in 1972, because their children were already teenagers and living in Panama, and because she was advised that it would make the proceedings more difficult if she mentioned the children, establishes by a preponderance of the evidence that [redacted] is the applicant's father.

An application or petition that fails to comply with the technical requirements of the law may be denied by the

AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n.9 (2nd Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO finds that in spite of its finding that the applicant's father is a U.S. citizen, the applicant is ineligible for citizenship under section 303 of the Act because he failed to establish by a preponderance of the evidence that his father was employed by the U.S. Government at the time of his birth.

The applicant's mother [redacted] states in an April 28, 2003, affidavit that [redacted] was in the U.S. Army when she met him at the U.S. Army base (Fort Clayton) in Panama in 1966 [redacted] states that [redacted] was an army soldier when they married, and that she obtained a monthly allotment check and an access pass to [redacted] after their marriage in March of 1967 [redacted] states further that Mr. Davis completed his term of active military service just before their separation in 1972, and that she has had no contact with [redacted] since 1972. The record contains a copy of [redacted] army base access pass issued on March 31, 1967. The pass expired on November 19, 1967, and stated that [redacted]'s sponsor was [redacted] The record contains no evidence that any subsequent army access passes were issued to [redacted] and the record contains no evidence of the monthly allotment checks [redacted] claims she received. The AAO notes that the record additionally contains an April 2003, application requesting military record information about [redacted] However, a June 11, 2003 letter from the Military Personnel Records Department stating that information about [redacted] cannot be provided without his written consent. The record contains no other evidence to establish the duration or length of [redacted] service in the U.S. military.

The AAO finds that the military access pass contained in the record establishes that [redacted] served in the U.S. Army in Panama between March and November of 1967. The record contains no other documentary evidence relating to [redacted] military service, however, and the AAO finds that [redacted]'s affidavit is uncorroborated by material evidence and that it is vague and insufficient to establish in and of itself that Mr. [redacted] was employed by the U.S. Army at the time of the applicant's birth on July 7, 1971.

The applicant has also failed to establish that he qualifies for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Panama in 1971. Thus, the version of section 301 of the Act that was in effect at that time (section 301(a)(7)) controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act states in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The record contains no evidence to demonstrate that [redacted] was physically present in the United States for ten years between May 15, 1947 and July 7, 1971, five years of which were after May 15, 1961.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant in the present case has failed to meet

his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.